



# Press Release



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**Ranking Member, U.S. House Judiciary  
Committee**

**Dean, Congressional Black Caucus**

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For Immediate Release:  
June 22, 2005

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## **Conyers Challenges GOP on Flag Desecration Amendment**

Representative John Conyers, Jr., (D-MI) House Judiciary Committee Ranking Member, delivered the following statement on H.J. Res 10, the flag desecration amendment, today on the House floor:

“Today’s consideration of H. J. Res. 10 will show whether we have the strength to remain true to our forefather’s constitutional ideals and defend our citizens’ right to express themselves, even if we vehemently disagree with their method of expression.

Few Americans favor burning the flag. I personally deplore desecration of the flag in any form, but am strongly opposed to this resolution. This resolution goes against those ideals the flag represents and elevates a symbol of freedom over freedom itself. If adopted, this resolution would represent the first time in our Nation’s history that the people’s representatives voted to alter the Bill of Rights to limit the freedom of speech.

While some may say that this resolution is not the end of our First Amendment liberties, it may be the beginning. By limiting the scope of the First Amendment’s free speech protections, we are setting a most dangerous precedent. If we open the door to criminalizing Constitutionally-protected expression related to the flag, it will be difficult to limit further efforts to censor speech. Once we decide to limit freedom of speech, limitations on freedom of the press and freedom of religion cannot be far behind.

It has been said that the true test of any nation’s commitment to freedom of expression lies in its ability to protect unpopular expression, such as flag desecration. As Justice Oliver Wendell Holmes’ wrote in 1929, the Constitution protects not only freedom for the thought and expression we agree with, but “freedom for the thought we hate.”

This resolution is in response to two Supreme Court decisions – Texas v. Johnson in 1989 and United States v. Eichman in 1990. It is always tempting for Congress to “show the Court who’s boss,” by amending the Constitution to outlaw flag-related expression. But if we do, we will not only be carving an awkward exception into a document designed to last for the ages, but will be undermining the very Constitutional structure Jefferson and Madison designed to protect our rights. In effect, we will be glorifying fringe elements who disrespect the flag, and what it stands for, while denigrating the Constitutional vision of Madison and Jefferson.

Concern about the “tyranny of the majority” led the framers to create an independent judiciary free of political pressure to ensure that the legislative and executive branches would honor the Bill of Rights. A Constitutional amendment banning flag desecration flies in the very face of this carefully balanced structure. The fact that the Congress would consider the first ever amendment to the Bill of Rights without so much as a hearing this Congress makes this all the more objectionable.

James Madison warned against using the amendment process to correct every perceived Constitutional defect, particularly concerning issues which inflame public passion. And unfortunately, there is no better illustration of Madison’s concern than the proposed flag desecration amendment. History has proven that efforts to legislate respect for the flag only serve to increase flag-related protest, and a Constitutional amendment will no doubt increase such protests many times over.

Almost as significant as the damage this resolution would do to our own Constitution is the harm it will inflict on our international standing in the area of human rights. Demonstrators who ripped apart communist flags before the fall of the Iron Curtain committed crimes against their country's laws, yet freedom loving Americans applauded their brave actions. Yet if we pass this amendment, we will be aligning ourselves with autocratic regimes such as those in Iran and the former Soviet Union, and diminish our own moral stature as a protector of freedom in all of its forms.

Those of us who oppose this amendment to the Constitution prohibiting the physical desecration of the flag express the sentiment of many Americans. In May 2005, a majority of Americans opposed such an amendment by 63% to 35% because of its First Amendment restrictions. Our veterans, citizens who have risked their lives to defend the ideals the flag represents, oppose this amendment as well. *Veterans for Common Sense* and *Veterans Defending the Bill of Rights* do not want to see the First Amendment unraveled and a desecration of what the flag represents.

For those who believe a Constitutional amendment will honor the flag, I would urge them to actually read the Supreme Court's 1989 decision in Texas v. Johnson. The Majority wrote, "[t]he way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong ... We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag burner's message than by saluting the flag ... We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."

I urge the Members to maintain the constitutional ideal of freedom and to vote against this Resolution."

##JUD-109-06/22/05##